



Federal Communications Commission  
Washington, D.C. 20554

November 21, 2014

James B. Goldstein, Esq.  
Sprint Corporation  
12502 Sunrise Valley Drive  
Reston, VA 20196

DA 14-1687

Re: Sprint Corporation Request for Waiver to Permit 800 MHz Wideband Operations in Portions of the Texas-El Paso (Region 50) and New Mexico (Region 29) NPSPAC Regions Prior to Completion of 800 MHz Band Reconfiguration, WT Docket No. 14-133; FCC File Nos. 0006424249, 0006424260, 0006424272, 0006424289, 0006424293, 0006424109, 0006424128, 0006424144, 0006424211, 0006424216, 0006424232, 0006424136

Dear Mr. Goldstein:

In this letter, we grant two waiver requests by Sprint Corporation (Sprint) that will allow Sprint to deploy its 800 MHz wideband operations in certain portions of the Texas-El Paso (Region 50)<sup>1</sup> and New Mexico (Region 29)<sup>2</sup> National Public Safety Planning Advisory Committee (NPSPAC) Regions before 800 MHz Band reconfiguration has been completed in those Regions (collectively, Waiver Requests). Granting the Waiver Requests will permit LTE deployment in most of the counties within the Texas-El Paso and New Mexico NPSPAC Regions, providing Sprint's subscribers access to these valuable broadband wireless services while protecting the remaining public safety entity from harmful interference. We therefore find that granting the Waiver Requests is in the public interest.

Section 90.209(b)(7) of the Commission's rules<sup>3</sup> permits Economic Area-based 800 MHz Specialized Mobile Radio (SMR) licensees, such as Sprint, to deploy wideband operations in the 817-821/862-866 MHz portion of the SMR spectrum band in NPSPAC Regions where 800 MHz band reconfiguration is still continuing, and in the 821-824/866-869 MHz portion of the SMR band only in NPSPAC Regions where 800 MHz band reconfiguration has been completed.<sup>4</sup>

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<sup>1</sup> Sprint Corporation Request for Waiver to Permit 800 MHz Wideband Operations in Portions of Texas-El Paso (Region 50) Prior to Completion of 800 MHz Band Reconfiguration in the Entire NPSPAC Region; FCC File Nos. 0006424109, 0006424128, 0006424144, 0006424211, 0006424216, 0006424232, 0006424136 (filed Aug. 14, 2014) (Texas-El Paso Waiver Request).

<sup>2</sup> Sprint Corporation Request for Waiver to Permit 800 MHz Wideband Operations in Portions of New Mexico (Region 29) Prior to Completion of 800 MHz Band Reconfiguration in the Entire NPSPAC Region; FCC File Nos. 0006424249, 0006424260, 0006424272, 0006424289, 0006424293 (filed Aug. 14, 2014) (New Mexico Waiver Request).

<sup>3</sup> 47 C.F.R. § 90.209(b)(7).

<sup>4</sup> *Id.* See also Improving Spectrum Efficiency Through Flexible Channel Spacing and Bandwidth Utilization for Economic Area-based 800 MHz Specialized Mobile Radio Licensees, *Report and Order*, WT Docket 12-64, 27 FCC Red 6489, 6495-96 ¶ 12 (2012) (*800 MHz Wideband Order*). SMR licensees are authorized to operate in the 813.5-824/858.5-869 MHz portion of the 800 MHz band only in the Southeastern U.S. counties listed in Section 90.614(c). See 47 C.F.R. §

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Pursuant to this rule, Sprint is deploying a 1.25 MHz wide CDMA channel in the lower portion of the 800 MHz SMR band at 817-821/862-866 MHz throughout the country while rebanding is still underway.<sup>5</sup> In addition, Sprint is deploying a 5 x 5 MHz Long-Term Evolution (LTE) channel in the 800 MHz SMR band at 819-824/864-869 MHz, which comprises both the 817-821/862-866 MHz and 821-824/866-869 MHz portions of the SMR band, in NPSPAC Regions where 800 MHz band reconfiguration has been completed.<sup>6</sup> On August 14, 2014, Sprint filed the Waiver Requests so that it may deploy 800 MHz wideband operations at 821-824/866-869 MHz in certain portions of the Texas-El Paso and New Mexico NPSPAC Regions prior to full completion of the 800 MHz band reconfiguration in those Regions. On November 13, 2014, Sprint filed an *Ex Parte* providing additional information related to the Waiver Requests.<sup>7</sup>

In the Texas-El Paso Waiver Request, Sprint notes that in the Texas-El Paso NPSPAC Region, all but two of the public safety licensees from the “old NPSPAC band” (821-824/866-869 MHz) have successfully completed their retunes; only the City of El Paso and Ysleta Del Sur Pueblo have yet to retune.<sup>8</sup> Similarly, in the New Mexico Waiver Request, Sprint notes that in the New Mexico NPSPAC Region, all but one of the public safety licensees from the old NPSPAC band have successfully completed their retunes; only the City of Las Cruces has yet to retune.<sup>9</sup>

Sprint states that section 90.209(b)(7) prohibits broadband operations at 821-824/866-869 MHz in either the Texas-El Paso or New Mexico NPSPAC Regions until the City of El Paso and Ysleta Del Sur Pueblo, and the City of Las Cruces, respectively, each has certified that it has completed its retune in the corresponding NPSPAC Region.<sup>10</sup> Thus, Sprint argues, it cannot deploy broadband LTE in the old NPSPAC band in the areas of Texas-El Paso or New Mexico that are fully cleared of public safety operations, including populous metropolitan areas such as Odessa – Midland, San Angelo and Abilene, as well as Albuquerque and Santa Fe, respectively.<sup>11</sup> Sprint maintains that it can integrate the old NPSPAC band spectrum into its broadband network in much of the Texas-El Paso and New Mexico NPSPAC Regions without posing any risk of interference to the operations of the Texas-El Paso and New Mexico NPSPAC public safety licensees that have not yet retuned.<sup>12</sup>

Sprint therefore requests a waiver of section 90.209(b)(7) so that it may launch LTE in the 46 Texas-El Paso NPSPAC Region counties<sup>13</sup> and the 28 New Mexico NPSPAC Region counties<sup>14</sup> in

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90.209(b)(7); *800 MHz Wideband Order* at 6490 ¶ 1 n. 1. The NPSPAC Regions where Sprint requests relief do not contain any of the listed counties.

<sup>5</sup> See Texas-El Paso Waiver Request at 1; New Mexico Waiver Request at 1.

<sup>6</sup> See Texas-El Paso Waiver Request at 1; New Mexico Waiver Request at 1.

<sup>7</sup> Letter from James B. Goldstein, Senior Counsel, Legal and Government Affairs, Sprint Corporation, to Marlene H. Dortch, Secretary, Federal Communications Commission (filed Nov. 13, 2014) (*Ex Parte*).

<sup>8</sup> See Texas-El Paso Waiver Request at 3.

<sup>9</sup> See New Mexico Waiver Request at 2.

<sup>10</sup> See Texas-El Paso Waiver Request at 3; New Mexico Waiver Request at 2.

<sup>11</sup> See Texas-El Paso Waiver Request at 3; New Mexico Waiver Request at 3.

<sup>12</sup> See Texas-El Paso Waiver Request at 3; New Mexico Waiver Request at 3.

<sup>13</sup> See Attachment A.

which 800 MHz rebanding is complete. Sprint notes that each county in the Texas-El Paso NPSPAC Region is more than 80 miles away from the closest operational site of a Texas-El Paso area public safety licensee in the old NPSPAC band, and in the New Mexico NPSPAC Region, 26 of the 28 counties are entirely located more than 80 miles away from the closest City of Las Cruces<sup>15</sup> site still operational in the old NPSPAC band.<sup>16</sup> Sprint argues that this more-than-80-mile co-channel separation far exceeds the co-channel separation requirements in section 90.621(b) of the Commission's rules.<sup>17</sup> Further, Sprint maintains that the minimum 80-mile co-channel separation will provide an additional protection buffer for the remaining operations of the City of El Paso and Ysleta Del Sur Pueblo, and the City of Las Cruces, in the process of being retuned in the respective Texas-El Paso and New Mexico NPSPAC Regions.<sup>18</sup>

In addition, Sprint states that it will, as required by the Commission's rules, provide 30-days advance notice of Sprint's deployment and planned initiation date of operations in the Texas-El Paso and New Mexico NPSPAC Regions to the City of El Paso and Ysleta Del Sur Pueblo, and the City of Las Cruces, respectively.<sup>19</sup> Finally, Sprint states that if it does cause harmful interference to a Texas-El Paso or New Mexico NPSPAC Region licensee's operations, Sprint will work with that licensee to immediately implement mitigation measures.<sup>20</sup>

Sprint states that it has discussed the matter with the City of El Paso and Ysleta Del Sur Pueblo, and the Counsel for the City of Las Cruces, and provided each with details of Sprint's proposed deployment in the Texas-El Paso and New Mexico NPSPAC Regions, respectively.<sup>21</sup>

On August 14, 2014, the Commission issued a *Public Notice* seeking comment on the Waiver Requests.<sup>22</sup> While none of the Texas-El Paso or New Mexico NPSPAC Region public safety licensees filed comments in response to the *Public Notice*, Sprint submits written confirmation from each of these licensees indicating that none has any objection to a grant of the Waiver Requests in light of the 80-mile co-channel distance separation proposed by Sprint and Sprint's agreement that it will mitigate

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<sup>14</sup> See Attachment A.

<sup>15</sup> We note that the New Mexico Waiver Request states the "closest *SBC* site." New Mexico Waiver Request at 3 (emphasis added). Based on the full context of the New Mexico Waiver Request, however, we believe Sprint intended to state the "closest *City of Las Cruces* site" (emphasis added).

<sup>16</sup> See New Mexico Waiver Request at 3. Sprint states that in two counties where the 80-mile protection zone is bisected (Sierra and Lincoln), it will provide more than 80 miles of co-channel separation to any public safety sites in New Mexico on any site that it does deploy in these two counties. *Id.* at n. 9.

<sup>17</sup> See Texas-El Paso Waiver Request at 3; New Mexico Waiver Request at 3. Section 90.621(b) requires a 70-mile co-channel separation in the 800 MHz SMR band for high sites. 47 C.F.R. § 90.621(b).

<sup>18</sup> See Texas-El Paso Waiver Request at 3; New Mexico Waiver Request at 3.

<sup>19</sup> See Texas-El Paso Waiver Request at 3 n. 8; New Mexico Waiver Request at 3 n. 10. The 30-day notification is required by 47 C.F.R. § 90.209(b)(7). See also *800 MHz Wideband Order* at 6495 ¶ 14.

<sup>20</sup> *Ex Parte* at 2.

<sup>21</sup> See Texas-El Paso Waiver Request at 3; New Mexico Waiver Request at 3.

<sup>22</sup> Wireless Telecommunications Bureau Seeks Comment on Sprint Waiver Request to Permit Wideband Operations in Portions of New Mexico and Texas NPSPAC Regions, *Public Notice*, WT Docket 14-133, 29 FCC Rcd 10147 (WTB MD 2014) (*Public Notice*).

any harmful interference.<sup>23</sup>

Pursuant to section 1.925 of the Commission's rules, waiver may be granted if the petitioner establishes that: (1) the underlying purpose of the rule would not be served or would be frustrated by application to the instant case, and the grant of the waiver would be in the public interest; or (2) where the petitioner establishes unique or unusual factual circumstances, that application of the rule would be inequitable, unduly burdensome or contrary to the public interest, or the applicant has no reasonable alternative.<sup>24</sup>

Based on the unusual factual circumstances described by Sprint, we find that a waiver is warranted for these two cases because application of the rule would inhibit LTE deployment in the 46 counties in the Texas-El Paso NPSPAC Region and in the 28 counties in the New Mexico NPSPAC Region where retuning has been completed. As Sprint argues, it would be inequitable and unduly burdensome to prohibit its subscribers' access to these valuable broadband wireless services until the final two public safety licensees in the Texas-El Paso NPSPAC Region and one public safety licensee in the New Mexico NPSPAC Region complete their retuning from the old NPSPAC band, particularly where none of the licensees objects to the planned deployment. Such a constraint on broadband deployment and consumer choice is contrary to the public interest in light of measures (*i.e.* co-channel separation and advance notification) that will protect public safety entities from harmful interference. We therefore waive section 90.209(b)(7) to permit Sprint to accelerate its broadband deployment in the 46 Texas-El Paso counties and 28 New Mexico counties listed in Attachment A. This waiver is specifically conditioned on the following:

- (1) In the forty-six (46) Texas-El Paso counties listed in Attachment A, Sprint must maintain a minimum 80-mile co-channel separation between Sprint's proposed operations in 821-824/866-869 MHz and the closest City of El Paso or Ysleta Del Sur Pueblo site still operational in the old NPSPAC band. In the twenty-eight (28) New Mexico counties listed in Attachment A, Sprint must maintain a minimum 80-mile co-channel separation between Sprint's proposed operations in 821-824/866-869 MHz and the closest City of Las Cruces site still operational in the old NPSPAC band.
- (2) Sprint must provide the City of El Paso and Ysleta Del Sur Pueblo with 30-days advance notice of Sprint's deployment and planned initiation date of operations in the Texas-El Paso NPSPAC Region. Sprint also must provide the City of Las Cruces with 30-days advance notice of Sprint's deployment and planned initiation date of operations in the New Mexico NPSPAC Region.
- (3) Sprint may not deploy LTE in 821-824/866-869 MHz in the three (3) Texas-El Paso counties listed in Attachment B until 800 MHz band reconfiguration has been completed in the entire Texas-El Paso NPSPAC Region. Sprint also may not deploy LTE in 821-

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<sup>23</sup> Correspondence from Josh Garcia, Ysleta Del Sur Pueblo, to James Goldstein, Senior Counsel, Sprint Corporation, dated August 11, 2014; Correspondence from Edward Ozogar, Project Manager, Department of Information Technology Services, City of El Paso, to James Goldstein, Senior Counsel, Sprint Corporation, dated August 12, 2014; Correspondence from Matthew Plache, Esq., on behalf of the City of Las Cruces, to James Goldstein, Senior Counsel, Sprint Corporation, dated August 13, 2014.

<sup>24</sup> 47 C.F.R. § 1.925.

824/866-869 MHz in the five (5) New Mexico counties listed in Attachment B until 800 MHz band reconfiguration has been completed in the New Mexico NPSPAC Region.

- (4) If Sprint receives a report that station(s) operating in the areas covered by this waiver are causing harmful interference to a public safety licensee, it shall immediately suspend operation under this waiver of such station(s) except for test transmissions to identify and eliminate the interference. Sprint may resume operation under this waiver of such station(s) after the interference has been successfully mitigated.

Further, Sprint's operations remain subject to the Commission's rules regarding abatement of unacceptable interference as set forth in sections 90.672, 90.673, 90.674, and 90.675.<sup>25</sup>

As conditioned, our grant will facilitate more rapid broadband availability in the States of Texas and New Mexico, while protecting ongoing public safety operations in the old NPSPAC band until they are fully retuned. The conditions of this waiver will terminate for the Texas-El Paso NPSPAC Region when 800 MHz band reconfiguration has been completed in the entire Texas-El Paso NPSPAC Region and for the New Mexico NPSPAC Region when 800 MHz band reconfiguration has been completed in the entire New Mexico NPSPAC Region.

Accordingly, IT IS ORDERED that, pursuant to Section 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 303(r), and sections 0.331 and 1.925 of the Commission's rules, 47 C.F.R. §§ 0.331, 1.925, the Waiver Requests ARE GRANTED to the extent described above.

Sincerely,

Roger S. Noel  
Chief, Mobility Division  
Wireless Telecommunications Bureau  
Federal Communications Commission

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<sup>25</sup> See 47 C.F.R. §§ 90.672, 90.673, 90.674 and 90.675.

### Attachment A – List of Counties Subject to Waiver Requests

#### Texas-El Paso

Brewster	Menard
Brown	Midland
Callahan	Mitchell
Coke	Nolan
Coleman	Pecos
Comanche	Presidio
Concho	Reagan
Crane	Reeves
Crockett	Runnels
Eastland	Schleicher
Ector	Scurry
Fisher	Shackelford
Glasscock	Stephens
Haskell	Sterling
Irion	Stonewall
Jeff Davis	Sutton
Jones	Taylor
Kent	Terrell
Kimble	Throckmorton
Knox	Tom Green
Loving	Upton
Mason	Ward
McCulloch	Winkler

#### New Mexico

Bernalillo	McKinley
Catron	Mora
Chaves	Quay
Cibola	Rio Arriba
Colfax	Roosevelt
Curry	San Juan
DeBaca	San Miguel
Eddy	Sandoval
Guadalupe	Santa Fe
Harding	Socorro
Hidalgo	Taos
Lea	Torrance
Lincoln	Union
Los Alamos	Valencia

**Attachment B – List of Counties Excluded from Waiver Requests**

Texas-El Paso

Culberson
El Paso
Hudspeth

New Mexico

Dona Ana
Grant
Luna
Otero
Sierra

